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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

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3 TERRENCE MOORE, et al,

4 Plaintiffs,

5 v.

14 CV 8326 (CM)

6 NAVILLUS TILE, INC., et al,

7 Defendants.

8 -----x

New York, N.Y.  
March 11, 2015  
3:00 p.m.

10 Before:

11 HON. JAMES L. COTT,

12 Magistrate Judge

13 APPEARANCES

14 MARCUS ROSENBERG & DIAMOND, LLC

15 Attorneys for Bravo Builders, LLC

16 MICHAEL T. CONTOS, ESQ.

17 SPIVAK LIPTON LLP

Attorneys for NYC District Council of Carpenters

18 JAMES M. MURPHY, ESQ.

GILLIAN COSTELLO, ESQ.

19 CROMWELL & MORING LLP

Independent Monitor

20 GLEN MCGORTY, ESQ.

21 JONES DAY

Attorneys for Defendants Navillus Tile, Donal O'Sullivan  
and Helen O'Sullivan

22 JOSH GROSSMAN, ESQ.

23 PECKAR & ABRAMSON

Attorneys for Defendants Time Square and Kevin O'Sullivan

24 GREGORY R. BEGG, ESQ.

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(Case called)

(In open court)

THE DEPUTY CLERK: Terrence Moore, et al v. Navillus Tile, Inc., et al. Counsel, state your names for the record.

MR. MURPHY: James M. Murphy, Spivak Lipton.

MS. COSTELLO: Gillian Costello, also Spivak Lipton, for District Council.

MR. MCGORTY: Glen McGorty only in my role as independent monitor should the Court have any concerns or questions I can answer.

MR. GROSSMAN: Josh Grossman for Navillus Tile, Donal O'Sullivan.

MR. BEGG: Gregory Begg for Time Square and Kevin O'Sullivan.

MR. CONTOS: Michael Contos for Bravo Builders.

THE COURT: The first thing I want to say for the record, it was completely unclear from the letters that counsel sent to the Court when you asked the Court to undertake in camera review that we were talking about 2500 documents. It would have been much more helpful if you had made that clear to me and of course we received the box at 5:00 on Monday giving me not very much time to review the materials, but I have looked at them so I understand what we're talking about.

I have a number of threshold issues that I want to raise. The first question is, the subpoena was originally

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1 served on January 26 and was not responded to until February 17  
2 and now it's March 11. So is there a waiver issue here that I  
3 need to be concerned about? Have you not, Mr. Murphy, waived  
4 the right to even invoke this privilege?

5 MR. MURPHY: Your Honor, we --

6 THE COURT: Can you stand when you speak to the Court,  
7 please?

8 MR. MURPHY: Yes. Sorry, I apologize. We got an  
9 extension from defendants to do our production on February 17  
10 and with that production on February 17 we gave them the  
11 privilege log and it was later in that week that I received a  
12 call from one of the other defendants firms, from Mr. Begg  
13 wanting to discuss the privilege issue with respect to the  
14 Inspector General's documents. I told them that I would have  
15 to discuss that with our outside counsel, Barbara Jones, and  
16 with the independent monitor, Mr. McGorty, since Mr. McGorty  
17 was assigning confidential investigations to the Inspector  
18 General's office.

19 So I responded then the following Tuesday with the  
20 letter to the Court.

21 THE COURT: Well, let's assume for the moment that  
22 I'll consider this application a timely one. Why does the law  
23 enforcement privilege apply to this case? The union is not a  
24 governmental entity. It's my understanding of the law that  
25 this privilege applies only and can be invoked by the

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1 government. Why would it apply here?

2 MR. MURPHY: Because, your Honor, the Inspector  
3 General's office plays a special role under United States v.  
4 District Council in that the Inspector General and the Deputy  
5 Inspector General hiring has to be approved by the Office of  
6 the United States Attorney. They cannot be terminated and the  
7 bylaws which were approved by the United States Attorney's  
8 Office cannot be amended or changed in any way except with the  
9 approval of the United States Attorney's Office, provides for  
10 the Inspector General to conduct these investigations,  
11 including making referrals to law enforcement agencies or  
12 making other referrals for possible criminal prosecutions.

13 THE COURT: Well, the Inspector General exists and did  
14 exist before there was a consent decree with the government, is  
15 that not true?

16 MR. MURPHY: That's not true.

17 THE COURT: There was no Inspector General or anything  
18 like that at the union?

19 MR. MURPHY: Before the consent decree in 1994, no,  
20 your Honor, there wasn't.

21 THE COURT: There was no entity of any kind that  
22 investigated corruption or malfeasance within the union,  
23 whether they were called an Inspector General or not?

24 MR. MURPHY: There was what was called the  
25 anticorruption committee. The current Inspector General, Scott

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1 Danielson, was a member of that committee and I think played a  
2 crucial role in helping to investigate and then act as a  
3 witness on behalf of the U.S. Attorney's Office for the  
4 prosecutions that arose out of the indictments in mid to late  
5 2009, about 23 union officials as well as others who were  
6 indicted and convicted.

7 THE COURT: So you're hanging your hat, essentially,  
8 on the nexus between the fact that the union has a consent  
9 decree with the government and the fact that the Inspector  
10 General is a creature of that consent decree and therefore the  
11 investigations that the Inspector General undertakes somehow is  
12 at -- maybe this isn't the right word -- but at the behest of  
13 the government in some way? Is that the argument why this law  
14 enforcement privilege should be invoked here?

15 MR. MURPHY: I think it's at the behest of the  
16 government and the Court in the sense of the consent decree and  
17 the current stipulation and order to rid the District Council  
18 of racketeering, labor corruption, and to make sure that it  
19 stays clean as it moves forward into the future.

20 THE COURT: Well, I mean, first of all, this was not  
21 an issue that was at all addressed in your papers or, frankly,  
22 in the defendants' papers and there's not a lot of law on the  
23 subject because I've researched it and it's not surprising  
24 there isn't a lot of law on it because unions and private  
25 employers don't generally invoke the law enforcement privilege.

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1 If there's some corporation that has some internal  
2 investigative component do you think it also would be allowed  
3 to invoke the law enforcement privilege because they would be  
4 undertaking something that might ultimately result in the  
5 referral of criminal charges to the government? Because that's  
6 the analogy you're making.

7 MR. MURPHY: Yes. I think it depends upon the  
8 circumstances and the context. I think the history of the  
9 District Council and the government and the Court's efforts to  
10 clean it up beginning with the filing of the 1990 RICO case and  
11 then the imposition of the 1994 consent decree and all the  
12 activities from that time forward, then including the necessity  
13 of appointing a review officer in 2010 following the 2009  
14 indictments and convictions, I think it counseled that the  
15 current role of the Inspector General under the bylaws and  
16 under the supervision now of an independent monitor and under  
17 the continued supervision of the government and the District  
18 Court would counsel in favor of affording the Inspector General  
19 a qualified law enforcement privilege.

20 THE COURT: Well, even if I accept all of that, what  
21 do I now have in front of me that's in the record that supports  
22 that? And I'll tell you what I have. This is what I have: I  
23 have a letter from you in which you say that Mr. McGorty has  
24 told us that he believes it is crucial to protect the integrity  
25 of the Inspector General's office, including its investigatory

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1 methods, investigation of both unknown parties and the  
2 confidentiality afforded to participating persons. That's the  
3 sum and substance of what I have to support your invocation of  
4 the law enforcement privilege. I don't have a declaration from  
5 Mr. McGorty. I don't have a declaration from the Inspector  
6 General. I don't have any information about the nature of  
7 these investigations. I don't have anything that implicates  
8 what the law enforcement privilege is designed to protect so  
9 that I can evaluate whether this is a proper invocation.

10 I look in a box that you send me and you think that I  
11 can draw from my review of that box an assessment of whether  
12 there would be some undermining of the confidentiality of  
13 sources other than in the generic sense of things or, for  
14 example, that law enforcement techniques and procedures are  
15 implicated? Is the IG's investigation considered law  
16 enforcement techniques? I could go on. I have about 50  
17 questions like this, none of which have been answered and the  
18 record before me hasn't been developed at all. So I'm very  
19 uncomfortable with the notion that the law enforcement  
20 privilege applies here. I really don't see how it does. Just  
21 because the Inspector General and the monitor don't like the  
22 fact that these files potentially could be reviewed by a  
23 non-party.

24 Now, that said, I have equal problems with the folks  
25 at the other table because they've served you with an

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1 extraordinarily broad, indeed inherently overbroad document  
2 request which then necessitated you and your colleagues in your  
3 best judgment to err on the side of I think amassing anything  
4 that possibly could come within the broad contours. So  
5 therefore I have 2500 pages, I'm not going to quantify it, but  
6 some significant percentage in my quick review that I wouldn't  
7 consider responsive to the inquiry. And, you know, at the end  
8 of the day, given that discovery in this case closes in two  
9 weeks from today there are an awful lot of nuanced and  
10 complicated legal issues that I would prefer not to have to  
11 resolve because I would prefer to kind of cut through all of  
12 this and figure out a common sense solution.

13 Which takes me back to my first and most important  
14 issue that I want to raise with you, which I know has been  
15 discussed previously. Why wouldn't an attorneys eyes only  
16 review of those documents in your offices be the appropriate  
17 resolution here?

18 MR. MURPHY: I would just have some concerns about the  
19 security of certain information, especially confidential  
20 informants. And the identities of the investigators, their  
21 vehicles to the extent that can be inferred from the various  
22 documents. If I may, your Honor, we would certainly be happy  
23 to supplement the record. We also are developing and could  
24 submit to the Court --

25 THE COURT: I don't want you to supplement the record.



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1 We have two weeks to go. Judge McMahon has already extended  
2 discovery in this case. I can't predict if she will again. I  
3 know another application was made to her today to extend it for  
4 two days. My sense is the lawyers are not expecting to receive  
5 a further extension of discovery.

6 You should have submitted a declaration to me from Mr.  
7 McGorty before today. You should have written me longer than a  
8 two-page letter assuming the law enforcement privilege applied  
9 when there are serious questions about whether it does or  
10 doesn't. I don't have time given the speed at which this case  
11 is moving along to wait for this. I'm trying to figure out a  
12 practical common sense solution. If you're willing to do an  
13 attorneys eyes only with redactions so the names of  
14 confidential sources, investigators and the like are not  
15 revealed, then maybe that's something we should consider.

16 MR. MURPHY: Okay.

17 THE COURT: I understand the sensitivity of what  
18 you're raising but there are an awful lot of complex questions  
19 here that the parties sort of glossed over and I can't gloss  
20 over them if I'm really going to dig into what's before me  
21 here. But as is often the case there are practical solutions  
22 that can be had and I have other questions for folks at the  
23 defense table before we work out any formal arrangement of some  
24 kind of attorneys eyes only review and a protective order with  
25 redactions. But that's what to me makes the most sense given

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1 all the problems that I see in front of me. All right? But  
2 let me hear, who is going to speak for defendants?

3 MR. BEGG: Gregory Begg, your Honor.

4 THE COURT: First of all, let's assume for the moment  
5 that the law enforcement privilege does apply in some fashion  
6 here and you all didn't make an argument that it didn't apply.  
7 You didn't cite any cases or anything like that. But let's  
8 assume for the moment it does apply, all right? Now, it is a  
9 qualified privilege, to be sure.

10 MR. BEGG: Correct.

11 THE COURT: What compelling need do you have at the  
12 back table that you're going to derive from that box of  
13 materials that doesn't already exist so that this isn't  
14 basically just an exercise in corroboration? What do you  
15 expect to find that you think would be different from what you  
16 already have given that the nature of your request is -- if I  
17 can find it -- you want all documents, all documents,  
18 communications and/or correspondence concerning Navillus, Time  
19 Square, ACS, HDK, Donal O'Sullivan and/or Kevin O'Sullivan that  
20 relate to the allegation that Navillus, Time Square, HDK and/or  
21 ACS are involved in or have control over the operations,  
22 management, labor relations, projects, equipment or ownership  
23 of one another or that Navillus, Time Square, HDK and/or ACS  
24 are related to one another in any way. That's what you've  
25 asked for.

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1           That's awfully broad and what is it that you think  
2           this non-party has that's responsive to this request that you  
3           have not gotten in discovery in other ways and/or that you  
4           don't have within your own possession?

5           MR. BEGG:   Okay.

6           THE COURT:   Given that you are these people.

7           MR. BEGG:   Sure.   First of all, we subpoenaed the  
8           District Council; Ed McWilliams, who is a union official,  
9           Michael Donnelly, who is a union official, James Macon, who is  
10          a union official and Ruben Colon, who is a union official for  
11          the carpenters union.   We subpoenaed those because they were  
12          identified by the plaintiffs' counsel as the key people  
13          supporting their case.   We asked for information through the  
14          plaintiffs' attorney.   We were directed to serve subpoenas on  
15          the union itself, those union entities, the parties themselves,  
16          which we did.   We were told they were the witnesses.   That's  
17          why we subpoenaed them.

18          I don't think our request is over broad.   It asks for  
19          exactly what is at issue here.   What evidence do you have that  
20          these parties are alter egos of each other, that they are  
21          acting as one entity.   Plaintiffs have told us that's where we  
22          have the information.   These are the witnesses who have the  
23          information.   We served the subpoenas and then we're told  
24          whatever information they have is protected by privilege.

25          THE COURT:   Have you deposed any of them?

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1           MR. BEGG: We've deposed several of them and left the  
2           depositions open pending the production that we're disputing  
3           here.

4           THE COURT: And what is it that you think this  
5           production will enhance as far as the information you've  
6           already adduced from them under oath at their depositions?

7           MR. BEGG: I wouldn't know unless I saw the  
8           information, your Honor. But they're telling us, they told us  
9           the information they have to support their case can be obtained  
10          through those parties and those parties are saying I can't  
11          provide it to you and the plaintiffs aren't providing it to us  
12          either.

13          THE COURT: No, hold on --

14          MR. BEGG: I don't know whether plaintiffs ever  
15          received the information from the IG's office that we're  
16          seeking. I don't know whether they have.

17          THE COURT: Well, let's come back to that later. Let  
18          me ask you this: Let's say there's a file in there that  
19          reflects that the Inspector General has investigated whether a  
20          union member admitted working for a non-union contractor, okay?  
21          In the jurisdiction of the carpenters, so it was something he  
22          shouldn't have done. Okay? How is that going to be relevant  
23          or helpful to your case, your defense?

24          MR. BEGG: If they use the fact that a particular  
25          trade worker worked, which they are alleging, just because a

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1 particular trade worker worked for Navillus, which is a union  
2 entity and also worked for ACS which is a non-union entity, the  
3 fact that they worked for both employers is evidence of alter  
4 ego status. That's the argument the plaintiffs are making.

5 THE COURT: And you questioned these union employees  
6 who were deposed about this subject already?

7 MR. BEGG: Some of them. Not all of them. And at  
8 deposition other privileges were asserted as well, such as  
9 attorney-client, which I dispute but it's not worth fighting  
10 over, the assertion of attorney-client privilege at several of  
11 these depositions. At that point they were taking the position  
12 that there were these coalition meetings between these various  
13 trades where they were discussing the alleged alter ego status.  
14 The plaintiff's law firm, Tom Kennedy the chief counsel  
15 attended those meetings. Just because he attended those  
16 meetings they asserted attorney-client privilege, that  
17 prevented these witnesses from testifying about what occurred  
18 at these meetings, discussing the facts and evidence that they  
19 were collecting against our clients. So we're being frustrated  
20 and kind of stonewalled by the plaintiffs' firm being directed  
21 to try to get these files elsewhere, now we're told the  
22 privilege exists.

23 By the way, I agree with the practical solution. I  
24 suggested to Mr. Murphy, I wouldn't know whether what you have  
25 I need or not. I right away said let's do attorneys eyes only,

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1 the quickest way. I'll review it, if I don't need it I don't  
2 need it. I hope I don't.

3 THE COURT: How do you feel about the proposed  
4 redactions?

5 MR. BEGG: I'll get to that in a second. I would be  
6 happy to do that. My proposal to him was let me do the  
7 attorneys eyes only review. If there's a document I think is  
8 relevant that I need we can fight over that later some other  
9 time and ask the Court for specific relief on specific  
10 documents. I was not aware at any time of the volume of the  
11 papers. I looked at the privilege log. I thought there were  
12 only a few. I was not aware there were several thousand. That  
13 wasn't brought to my attention.

14 In terms of redactions I don't think they've  
15 established by any means an entitlement to privilege. It's a  
16 private entity. Even if the private entity was working at the  
17 behest of or in cooperation with a government law enforcement  
18 agency there might be a privilege and still then and only then  
19 is it a qualified privilege.

20 Second, you've got to make a specific showing, an  
21 articulation with respect to each document or kind of document  
22 or information you're trying to protect to show why is this  
23 sensitive and what law enforcement interest is at stake in  
24 disclosing that and that's not been made. And they use words  
25 like "confidential informant." Who is a confidential

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1 informant? To me that's just a witness unless they're working  
2 at the behest of or under the direction of a legitimate  
3 governmental law enforcement agency. Same with they're worried  
4 about protecting the identity of investigative vehicles. I  
5 don't know what that means. Is that -- by the way, the way  
6 this has been described, the union itself has its own -- it's  
7 not called the Inspector General. The witnesses that we're  
8 deposing they, sort of categorized or stylized themselves as  
9 part of an investigative team that works within the Carpenters  
10 Union and outside of the Carpenters Union in this coalition  
11 with several other trades that are plaintiffs in this case as  
12 well as working with a consulting group called Locker  
13 Associates that apparently was collecting information and doing  
14 this quote-unquote investigation.

15           Every person we asked at some point or other said this  
16 was a confidential investigation. I see no legal basis for  
17 that. Your Honor, I'd be happy -- I don't know the volume of  
18 paper we have here -- I'd be happy to sign an attorneys eyes  
19 only, go through those documents as quickly as possible. It  
20 may be that there isn't much relevant there and if there's a  
21 specific document that he can articulate whether that specific  
22 document needs some protection or not, and I can argue against  
23 that position. I need to move on. I asked him immediately, he  
24 said give me one week and I'll speak to the IG. One week went  
25 by and he said I need another week, then he said he would

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1 produce the document to the Court. Instead he wrote a letter  
2 without producing them.

3 Time has gone on. We're already through these  
4 depositions, I'm looking for the most practical solution. I  
5 don't care to litigate or need a decision on law enforcement  
6 privilege, frankly. So I think there's a practical solution.  
7 I'm willing to cooperate.

8 THE COURT: Mr. Murphy, have you produced these  
9 documents to the plaintiffs?

10 MR. MURPHY: Which documents, your Honor?

11 THE COURT: The documents in the box by the foot of my  
12 law clerk.

13 MR. MURPHY: We've produced nearly 4,000 other  
14 documents and not held any of them to be confidential. They're  
15 from the District Council as well as the records of the four  
16 union employees, officials that were individually subpoenaed  
17 and from whom depositions have been taken or will be taken so  
18 that the impression that there are documents that have been  
19 somehow hidden away under the auspices of the Inspector General  
20 are simply not true. As I said, we produced nearly 4,000  
21 documents. Maybe we overly produced, but we took the subpoenas  
22 seriously and read them as broadly as possible and produced  
23 documents to the defendants in response to those subpoenas.

24 The one area where we looked to make a distinction in  
25 that or draw a line is with the office of the Inspector



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1 General.

2 THE COURT: Well, can you articulate for me why  
3 redactions of certain information in the collection that I have  
4 is necessary for an attorneys eyes only review?

5 MR. MURPHY: Because it would show, without the  
6 redaction, the identities of people who are providing  
7 information to the Inspector General would be revealed, the  
8 identities of confidential informants would be revealed and the  
9 identities of certain of the Inspector General's own  
10 investigators would also be revealed. That's why we -- we  
11 would certainly agree to redaction of that material.

12 THE COURT: Revealed to an attorney.

13 MR. MURPHY: Yes. Then what?

14 THE COURT: Revealed to an attorney and what's your  
15 fear if that's revealed and he's subject to a Court order that  
16 says that he can't do anything with it other than to make a  
17 judgment as to whether it's necessary for his litigating  
18 position in which case he will then discuss it with you and if  
19 you prevent him from wanting to use some documents then we'll  
20 further litigate that but it will not be a box of 2500  
21 documents, it will be eight documents and then we'll talk about  
22 whether he needs those eight documents. Do you think he's  
23 going to write down the names of all of those people and go  
24 back and tell his clients? He would be violating a Court  
25 order. He would be held in contempt.

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1 MR. MURPHY: I understand that.

2 THE COURT: I'm trying to understand why an attorneys  
3 eyes only solution here isn't practical and efficient. I'm  
4 trying to give you an opportunity to articulate it if I'm  
5 missing something.

6 MR. MURPHY: It's just trying to protect the integrity  
7 of the entire process with the Inspector General's office.

8 THE COURT: But that's at a level of generality that I  
9 don't know how to get my arms around, with all due respect. I  
10 don't really know what that means. I mean, no one likes  
11 someone else looking at one's internal investigations  
12 generically, I understand that. But the issue in this case, as  
13 I understand it, is the interrelationship among these companies  
14 and if there are union members who are sort of playing both  
15 sides of the fence, if I can put it that way, and that has been  
16 under investigation in some sense, that fact alone it seems to  
17 me wouldn't be privileged and protected.

18 MR. MURPHY: That fact that they would have  
19 themselves -- I don't think there's any compelling interest  
20 much less a compelling need for them to see these documents.  
21 As your Honor suggested, all of the documents that would go to  
22 their defense are in their custody and control as to whether or  
23 not they've kept up the corporate formalities, kept up separate  
24 finances, labor relations and other factors that would go into  
25 establishing or that they are or not alter egos of each other

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1 or a single employer. The burden of production and persuasion  
2 in this case is on the plaintiff's funds. We're a third party.

3 THE COURT: Right, but Mr. Begg tells me that the  
4 plaintiffs at least in part have indicated they are relying on  
5 information from your clients. So if that's true --

6 PLAINTIFF: That's been provided. As I said, we've  
7 produced almost 4,000 documents.

8 MR. BEGG: May I be heard, your Honor?

9 THE COURT: Yes. Mr. Begg.

10 MR. BEGG: There's one example that's relative.  
11 There's been identified a witness Wilson Bravo. He's a union  
12 member and identified also as a union salt. I don't know if  
13 your Honor is familiar with that term. A union salt, s-a-l-t,  
14 is a union worker who is sent by the union to work for a  
15 non-union employer, to essentially act as a spy. He's been  
16 identified as the witness by the plaintiffs as someone who has  
17 got critical information relating to their allegations. He  
18 works for one of the non-union entities and our experience so  
19 far has been when we ask somebody to get down to the nitty  
20 gritty of what do you know about alter ego, they say privilege.  
21 They're being identified as somebody with knowledge but then at  
22 the deposition they say this is privileged.

23 I'm guessing, but I don't know, perhaps, that Wilson  
24 Bravo is someone that maybe the IG's office considers as a  
25 confidential witness, although I dispute that's got any legal

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1 significance and he's a witness. He's identified as a witness.  
2 So if the Inspector General has information about Wilson Bravo  
3 and his acting as a union salt or spy that's certainly relevant  
4 to the case. I don't necessarily need to know the identity of  
5 anyone else and if I did then we can dispute that. I doubt it.  
6 So I'm happy to go with that solution. But I think the  
7 portrayal here as being fair and honest and open so far is a  
8 bit much and we're concerned, obviously, that somebody is  
9 hiding the ball here. We don't want that to happen.

10 I'll give you another example. There have been  
11 photographs and videotapes produced in discovery and every  
12 witness we've asked so far says I have no knowledge of where  
13 those photos and videotapes came from. There have been  
14 postings on social media that disparage our client. So far  
15 everyone is saying I have no knowledge of where those things  
16 came from, where those photographs came from or who posted  
17 them. I don't, frankly, believe that, but we'd like to get to  
18 the bottom of this, your Honor.

19 THE COURT: When you say you'll accept that practical  
20 solution does that mean that you'll be amenable to reviewing  
21 this document collection with certain redactions?

22 MR. BEGG: My only fear about redactions, your Honor,  
23 is the time frame we're talking about here. Wilson Bravo is  
24 being deposed tomorrow. I deposed a union witness yesterday, a  
25 union witness last week. We're running out of time. For them

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1 to go ahead now at this stage and have additional time for  
2 redactions I think is unnecessary, causing too much delay given  
3 all the time we've had so far to get past this solution  
4 especially since they've articulated zero specific legitimate  
5 governmental investigative interest to be protected by the two  
6 things I heard, the identity of a quote-unquote confidential  
7 informant and investigators vehicles.

8 THE COURT: Mr. McGorty, do you want to be heard at  
9 all?

10 MR. MCGORTY: Your Honor, briefly, I'd like to if you  
11 don't mind and I appreciate you letting me speak. I was not  
12 asked to supply a declaration. I would have been happy to and  
13 would be happy to for your Honor, but I appreciate your  
14 concerns about timing in this case. I don't have a view about  
15 how the balancing tests in this particular case ends up between  
16 what the compelling needs of the parties are, but I am here to  
17 support the notion that the IG in this particular case, in this  
18 particular organization serves in a law enforcement function  
19 and I appreciate that there isn't a lot of case law out there  
20 about this. The IG in my brief experience working at the union  
21 as the independent monitor appointed by Judge Berman, I worked  
22 with Mr. Danielson on a day-to-day basis. I assign  
23 investigations for him that come to my attention. There are  
24 confidential and anonymous tips provided -- anonymous publicly,  
25 not anonymous from the IG's office's perspective.

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1           In order to foster an environment where there is no  
2 monitor needed, there is no Court oversight, the IG in its  
3 current form has been installed by my predecessor and approved  
4 by the Court to clean up the union and continue the efforts to  
5 clean up the union. It is serving in as much of a law  
6 enforcement function as an office in a private entity can. It  
7 answers to me and it answers to the Court. It doesn't answer  
8 to the members of the union. It has a separate hiring practice  
9 and a separate oversight program than perhaps the corollary  
10 organization or committee did many, many years ago.

11           So I would only add, your Honor, to bolster the  
12 argument that there is relevance to the confidential identities  
13 of individuals who come forward to raise issues of corruption  
14 to the IG. There are files kept that maintain information  
15 about surveillance and investigative functions, all things that  
16 are akin to what would be corollary in a government  
17 organization and in this particular instance this IG's office  
18 answers to this Court and me as the agent of the Court. So I  
19 think it's an unusual circumstance. I do not think by  
20 suggesting there is some qualified privilege here for some  
21 types of documents or certain parts of documents it is going  
22 down the road, which I know your Honor is hesitant to do, to  
23 suggest that any organization that performs any sort of  
24 investigation internally can raise this issue. I do not think  
25 that's the case.

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1           Is there a compromise to be had? Again, I'm here  
2 without an interest in a sense. Maybe there is, but I do think  
3 that compromise should include any efforts your Honor could  
4 impose to preserve the integrity of the types of documents, and  
5 not everything, but the types of documents and information that  
6 the IG only has, that no one else in the union has, that  
7 relates to this investigation effort that the Court is  
8 overseeing. That's my view.

9           THE COURT: All right. Thank you, Mr. McGorty.  
10 Mr. Murphy, did you want to say anything else?

11          MS. COSTELLO: Your Honor, I did want to just --

12          THE COURT: You're not Mr. Murphy.

13          MS. COSTELLO: I'm Ms. Costello, your Honor. Gillian  
14 Costello.

15          THE COURT: You're now speaking for your client?

16          MS. COSTELLO: I am, your Honor.

17          THE COURT: That is looked on with disfavor by this  
18 Court?

19          MS. COSTELLO: I'm sorry, your Honor. Would you like  
20 me to sit down?

21          THE COURT: Well, I don't know. Do you have something  
22 to add to this --

23          MS. COSTELLO: Just, I did want to highlight something  
24 your Honor raised which is with regard to the compelling issue  
25 in this case. Of course all three go with something that the

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1 knowledge is typically within the knowledge of the defendant  
2 itself and we are a third party, as you know. There's been a  
3 lot of talk about what witnesses have argued in terms of  
4 privilege and what plaintiffs have said. We don't know about  
5 that, that's not what we're doing here. We're protecting the  
6 integrity of this office. But in terms of what we have  
7 produced, we have produced everything to everyone. It's not  
8 that the plaintiffs have access to that IG information. The IG  
9 has been very stingy about anybody seeing that information. So  
10 insofar as the information is out from the union they have it  
11 and the plaintiffs have it. And so this is not something that  
12 would be, for instance, a surprise at trial that the plaintiffs  
13 would have within that box. And I did just want to make that  
14 clear to your Honor.

15 THE COURT: Can you or Mr. Murphy describe for me for  
16 the record what the nature of the production that has been made  
17 includes?

18 MS. COSTELLO: Sure. In large part, your Honor, I  
19 think it would look very familiar to what your Honor has  
20 already seen. There are so far what has been produced is  
21 permits, governmental documents from agencies. It's research  
22 on the corporate entities. It is research about Wilson Bravo,  
23 photographs of Wilson Bravo, texts from Mr. Wilson Bravo.  
24 Texts from other individuals who communicated with union  
25 officials. E-mails between the individuals and Locker



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1 Associates about this organization. What you are looking at  
2 now are the files of the Inspector General and they have been  
3 segregated here. I just didn't want there to be an impression  
4 that the plaintiffs are sitting on this information that has  
5 been withheld from the defendants and we have done that. What  
6 we have produced we have produced to everyone and what we've  
7 withheld we've withheld from everyone.

8 Thank you, your Honor.

9 THE COURT: If we were going to undertake some sort of  
10 an attorneys eyes only review and you wanted to do some  
11 redactions consistent with what you've articulated, how long  
12 would that take? And, by the way there is some duplication,  
13 and that's an understatement, in the materials that you  
14 provided for me.

15 MS. COSTELLO: Your Honor, that duplication reflects  
16 the files themselves and that's why they were provided that  
17 way. There's a large amount of duplicative information, I do  
18 agree with that. I think we could have this to the other side  
19 or however you want to do it by the end of the day on Friday.

20 THE COURT: That seems reasonable to me. I certainly  
21 don't want to have it. I brought the box up here to give it  
22 back.

23 MS. COSTELLO: Oh, no. Okay.

24 THE COURT: So I'm trying to disassociate myself from  
25 this massive collection of documents unless there's something

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1 further that I need to do. Mr. Begg, attorneys eyes only  
2 review on Monday, okay? You all get a Court order to me that I  
3 can sign between now and Monday and, Mr. Begg, or one of your  
4 colleagues on Monday can have at this with whatever redactions  
5 they're going to make so it's available to you by the opening  
6 of business on Monday.

7 MR. BEGG: I just ask it be a day sooner, your Honor.

8 THE COURT: What is that?

9 MR. BEGG: I would ask it be a day sooner. We've held  
10 three depositions open.

11 THE COURT: It's already Wednesday afternoon. We're  
12 talking about 48 hours. That's rather reasonable, it seems to  
13 me. You're asking to see it on Friday instead of Monday? Why?

14 MR. BEGG: Because we're running out of time. We've  
15 already done three of these depositions. We have another one  
16 tomorrow. We're on a very tight time frame.

17 THE COURT: I'm not convinced that it's going to make  
18 that much of a difference because I'm not convinced having  
19 looked at this that your world is going to be rocked when you  
20 see this, okay?

21 MR. BEGG: I rather hope so.

22 THE COURT: To use a phrase. I mean, I could be  
23 wrong, but given what counsel has described that has been  
24 produced to you already, I certainly think it's a fair  
25 statement for me to say without compromising anything that at

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1 least some of what you'll see is of a piece with what you've  
2 already seen.

3 MR. BEGG: Very good, your Honor.

4 THE COURT: If I'm wrong and you all have more fights,  
5 I know I'm going to hear about it, and you'll get in before me  
6 again in due course. It's a Court-imposed deadline from Judge  
7 McMahon. I have to live with that just as you all have to live  
8 with it. But I don't see the difference between coming to  
9 their office at 9:00 on Monday and coming to their office at  
10 9:00 on Friday, something that I'm going to have to make them  
11 snap to it an extra 24 hours in advance when they're sitting  
12 here quite unhappy they're going to have to do this to begin  
13 with.

14 MR. BEGG: Thank you, your Honor.

15 THE COURT: So that's the solution we'll arrive at  
16 which is the review by Monday. If you finish earlier let him  
17 know, but I assume you won't but it should be available for his  
18 review as of Monday morning and I do think you should submit an  
19 order for me to sign that makes it clear exactly what's being  
20 agreed to here, which is that it's an attorneys eyes only  
21 review and any breach of that would be subject to contempt of  
22 Court but it's without prejudice to Mr. Begg making any further  
23 application he wants to make to the Court should there be  
24 documents in his review that he believes are not privileged or  
25 otherwise should be produced. So you're going to have to have

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1 a further meet and confer to that effect. If there are  
2 documents within this collection that he wants to see more of I  
3 encourage you all to be reasonable to try to navigate that  
4 because there may be documents he wants to utilize that may  
5 have certain redactions, then Mr. Begg will have to decide  
6 whether he can live with using them if they have certain  
7 redactions. It may not matter to person X. That may matter to  
8 Mr. McGorty and the IG but who it is may not matter. It may  
9 matter what the subject of it is.

10 So I ask you all to try and be practical because they  
11 care I think about things somewhat differently I suspect than  
12 you do. You care about sort of core allegations and if it's  
13 Joe Smith or Bob Jones it doesn't really matter what they're  
14 saying, whereas it's important for the world not to know it's  
15 Bob Jones or Bill Smith and that's what they care about.

16 So I expect there are probably going to be common  
17 sense solutions even if there are documents in this collection  
18 you want to use. We'll take it one step at a time and after  
19 you had your review and after you've had your meet and confer  
20 you are without prejudice to reserving your right to make a  
21 further application if you need to.

22 MR. BEGG: Very good. Thank you.

23 THE COURT: All right? And we'll put out an order to  
24 this effect resolving the applications that are on the docket.

25 MR. BEGG: Thank you.

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1           THE COURT: Anything else? Have a great day and can I  
2 give you the box back?

3           MS. COSTELLO: Yes.

4           THE COURT: Have a good afternoon.

5           (Adjourned)

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